IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1125 OF 2006

Shri Arun V. Subhedar. ...Petitioner.
Vs.
Shyamacharan Bhagwati Prasad Tiwari & Ors. ...Respondents.
....
Mr. N. G. Chhatre for the Petitioner.
Mr. B.A. Singh for the Respondents.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

June 6, 2006.

ORAL JUDGMENT:

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The First Respondent instituted a declaratory suit, RAD Suit No.918 of 2000 before the the Court of Small Causes for a declaration and injunction. The suit was instituted in respect of an open space admeasuring 10' x 10', described as being next to Shop Nos.8 and 9, abutting on N.S. Road, Pandurang Niwas, Mulund (West), Mumbai. According to the First Respondent, the

suit premises were let out to him in the year 1965-66 on a monthly rent of Rs.162/-. The suit was instituted on an apprehension that the Petitioner, the original Defendant, was attempting to get the premises vacated by recourse to unlawful means. An application for interim relief was moved before the Trial Court. By an order dated 7th March 2001, the Learned Trial Judge discharged the interim notice and declined to grant interim relief on the ground, inter alia that the premises consisted of open land. The Learned Trial Judge held that as a result of the definition of the expression "premises" in Section 7(9) of the Maharashtra Rent Control Act, 2000, purely open land, not being appurtenant to a building or a part of a building given on rent, would not attract the provisions of the Act. The order of the Trial Judge was affirmed in appeal by the Appellate Bench of the Court of Small Causes on 31st June 2002. Thereafter, it is common ground that the Petitioner applied before the Court of Small Causes for withdrawal of the suit on 27th November 2002 with liberty to institute a fresh suit on the same cause of action. Such liberty was granted and accordingly the suit was dismissed as withdrawn. Thereafter, the First Respondent instituted a suit before the City Civil Court. In the said suit, a preliminary issue was framed on the question as to whether the

suit would be maintainable in the City Civil Court. The Petitioner had raised an objection to the jurisdiction of the City Civil Court claiming that ex-facie the averment in paragraph 1 of the Plaint was that there was a relationship of landlord and tenant between the parties. Accordingly, it was alleged that the City Civil Court will have no jurisdiction. The objection was overruled by the City Civil Court in an order dated 17th June 2005 which is impugned in these proceedings.

3. On behalf of the Petitioner it has been submitted that in the earlier suit which was filed in the Court of Small Causes, the application for interim relief was refused by the Learned Trial Judge and one of the grounds of refusal was that the Maharashtra Rent Control Act, 2000, did not cover an open space of land which was not appurtenant to a structure which had been let out. However, it was submitted by Counsel that the inapplicability of the provisions of the Maharashtra Rent Control Act, 2000, would not mean that the suit was not a suit falling in the description contained in Section 41 of the Presidency Small Cause Courts Act, 1882. In view of the settled position in law, it was submitted that the Presidency Small Causes Court would have exclusive jurisdiction to try a suit of the

nature reflected in Section 41 of the Act of 1882. It was his case that a bare perusal of the Plaint would indicate that this is a suit between a landlord and tenant relating to the recovery of possession of immovable property situated in Greater Bombay and in view thereof, the suit was maintainable with reference to the provisions of Section 41 and ought to have been presented only before that Court.

4. Section 41 of the Presidency Small Causes Courts Act, 1882, provides as follows :

> "41. Suits or Proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except to those to which other Acts apply to lie in Small Cause Court.
>
> -(1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the license fee or charges or rent thereof, irrespective of the value of the subject matter of such suits or proceedings.
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> -(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence fee or charges or

> rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging Rates (Control) Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, The Bombay Housing Board Act, 1948 or any other law for the time being in force, applies."

5. The provisions of Section 41 have been considered by the Supreme Court in **Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale**, AIR 1995 SC 1102. The Supreme Court has held that in order to attract the applicability of Section 41(1), the following conditions must be satisfied before the jurisdiction of a competent Court such as the City Civil Court is ousted, namely :

> "(i) it must be a suit or proceeding between the licensee and licensor; or
>
> -(ii) between a landlord and a tenant;
>
> -(iii) such suit or proceeding must relate to the recovery of possession of any property situated in Greater Bombay; or
>
> -(iv) relating to the recovery of the licence fee or charges or rent thereof."

The words "relating to the recovery of possession of any immovable property" have been construed by the Supreme Court in **Mansukhlal Jain**'s case thus :

> "It is pertinent to note that Section 41(1) does not employ words "suits and proceedings for recovery of possession of immovable property". There is a good deal of difference between the words "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". The words "relating to" are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plaintiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by Section 41(1)."

In other words, a suit relating to the recovery of possession brings within its sweep not merely a suit by the landlord for recovery of possession, but a suit by a tenant or licensee for protecting his possession of immovable property against an unlawful attempt on the part of the landlord to recover possession.

6. In the present case, *ex-facie* a perusal of the Plaint would show that paragraph 1 of the Plaint proceeds on the existence of the relationship of landlord and tenant, albeit in respect of a piece of open land admeasuring 10' x 10'. Paragraph 1 of the Plaint reads thus:

> “1. The Plaintiff states that he is tenant of an open space admeasuring about 10' x 10', next to Shop No.8 & 9, abutting on N.S. Road, Pandurang Niwas, Mulund (West), Mumbai-400 080, at monthly rent of Rs.26.75, hereinafter referred to as the 'Suit Premises' and owner of a Pan bidi stall situated and constructed on the suit premises. The Plaintiff states that the Defendants are landlords of the suit premises.”

The suit has been instituted by the First Respondent on the basis that he is in continuous, exclusive and legal possession of the premises (paragraph 13) and on the apprehension that he would be forcibly dispossessed by the Petitioner without due process of law. The reliefs that have been sought in the suit are: (i) A declaration that the Petitioner has no right to disturb or dispossess the First Respondent from the suit premises in any manner save and except by due process of law; and (ii) A permanent injunction restraining the Petitioner from disturbing and/or interfering with the premises or the possession of the First Respondent in respect thereof save and except by due process of law. Each of the requirements that are set out in Section 41 of the Presidency Small Cause Courts Act, 1882, is fulfilled. The suit is a suit between a landlord and a tenant. The suit relates to the recovery of possession of immovable property situated in Greater Mumbai. The foundation of the suit is an apprehension of the First

Respondent that the Petitioner would interfere with his possession without due process of law. Such a suit is clearly maintainable before the Court of Small Causes.

7. It may be stated in fairness that Counsel appearing on behalf of the Petitioner has not opposed the request which has been made on behalf of the First Respondent at the conclusion of the judgment that the First Respondent may be permitted to withdraw the suit before the City Civil Court with liberty reserved to institute a suit before the Court of Small Causes under Chapter VII of the Presidency Small Causes Courts Act, 1882.

8. In the circumstances, the impugned order of the City Civil Court dated 17th June 2005 in SC Suit No.6430 of 2002 is quashed and set aside. Liberty is granted to the First Respondent to withdraw the suit before the City Civil Court and institute a fresh suit before the Court of Small Causes under Chapter VII of the Presidency Small Cause Courts Act, 1882. It is common ground between Counsel that an order of status quo passed by the City Civil Court continues to hold the field. In view of the withdrawal of the suit, and the consequential liberty to institute a fresh suit, there

shall be an order that the status quo shall remain in force for a period of eight weeks from today. The Petition is disposed of. No order as to costs.

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